

MEMO

To: Jodi Mauroner
From: Michelle Fontenot
Subject: Minimum mandatory sentences
Date: February 21, 2001

A. Title 14 Offenses

The following is a list of crimes found in Title 14 which contain minimum sentences without the benefit of probation, parole, or suspension of sentence. Please note that some of the following crimes have mandatory minimum sentences for only second/subsequent offenses, and some only for aggravating circumstances.

R.S. 14:27 Attempt - 10 years at hard labor without benefit of parole, probation, or suspension of sentence **if** the offense attempted is punishable by death or life imprisonment.

R.S. 14:30 First degree murder - Death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence

R.S. 14:30.1 Second degree murder - Life at hard labor without benefit of parole, probation, or suspension of sentence

R.S. 14:31 Manslaughter - 10 years at hard labor, without benefit of probation or suspension of sentence **if** the victim was killed as a result of receiving a battery and was under the age of ten years.

R.S. 14:32 Negligent homicide - 2 years at hard labor, without benefit of probation or suspension of sentence **if** the victim was killed as a result of receiving a battery and was under the age of ten years.

R.S. 14:32.1 Vehicular homicide - 2 years with or without hard labor; at least one year of the sentence shall be imposed without benefit of probation parole, or suspension of sentence.

R.S. 14:34.2 Battery of a police officer - 15 days without benefit of suspension of sentence

R.S. 14:34.3 Battery of a school teacher - 15 days, with at least 72 hours imposed without benefit of suspension of sentence

R.S. 14:34.3 Battery of a school or recreation athletic contest official - 48 hours without benefit of suspension of sentence, with the exception that the court, in its discretion, may sentence offender to community service work

R.S. 14:34.5 Battery of a correctional facility employee - 15 days without benefit of suspension of sentence, except that offender shall be imprisoned with or without hard labor without the benefit of parole, probation, or suspension of sentence for at least one year if the offense was committed while offender was in the custody of DPS & C or in any jail, prison, etc.

R.S. 14:35.1 Simple battery of a child welfare worker - 15 days without benefit of suspension of sentence

R.S. 14:37 Aggravated assault - 120 days without benefit of suspension of sentence if the committed upon a store's or merchant's employee while the offender is engaged in the perpetration or attempted perpetration of theft of goods

R.S. 14:37.1 Assault by drive-by shooting - 1 year, with or without hard labor, without benefit of suspension of sentence

R.S. 14:42 Aggravated rape - Life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. If the victim was under the age of twelve years and if the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. If the victim was under the age of twelve years and if the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

R.S. 14:42.1 Forcible rape - 5 years at hard labor, with at least 1 year imposed without benefit of probation, parole, or suspension of sentence

R.S. 14:44 Aggravated kidnapping - Life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence

R.S. 14:44.1 Second degree kidnapping - 5 years at hard labor, with at least 2 years imposed without benefit of parole, probation, or suspension of sentence

R.S. 14:50.1 Perpetration or attempted perpetration of crimes against a victim sixty-five years of age or older - 5 years without benefit of parole, probation or suspension of sentence in addition to any other penalty imposed if convicted of manslaughter, simple rape, forcible rape, aggravated assault, aggravated battery, simple battery, aggravated kidnapping, simple kidnapping, or false imprisonment or an attempt of these crimes where the victim is sixty-five years or older

R.S. 14:51 Aggravated arson - 6 years at hard labor, with at least 2 years imprisonment without benefit of parole, probation, or suspension of sentence.

R.S. 14:52.1 Simple arson of a religious building - 2 years at hard labor without benefit of parole, probation, or suspension of sentence

R.S. 14:56.2 Criminal damage of a pipeline facility - 2 years at hard labor without benefit of suspension of sentence if it is foreseeable that human life might be threatened

R.S. 14:62.1 Simple burglary of a pharmacy - 1 year at hard labor without benefit of parole, probation or suspension of sentence for a first conviction. For a second or subsequent conviction, the offender shall be imprisonment at hard labor for not less than 2 years without benefit of parole, probation, or suspension of sentence.

R.S. 14:62.2 Simple burglary of an inhabited dwelling - 1 year at hard labor without benefit of parole, probation or suspension of sentence

R.S. 14:62.2 Simple burglary of a religious building - 2 years with or without hard labor without benefit of probation, parole, or suspension of sentence

R.S. 14:64 Armed robbery - 10 years at hard labor without benefit of parole, probation, or suspension of sentence

R.S. 14:64.1 First degree robbery - 3 years at hard labor without benefit of parole, probation, or suspension of imposition or execution of sentence

R.S. 14:64.2 Carjacking - 2 years at hard labor without benefit of parole, probation, or suspension of sentence

R.S. 14:64.3 Armed robbery; use of firearm; additional penalty - An additional 5 years imprisonment without benefit of parole, probation, or suspension of sentence if the dangerous weapon used in an armed robbery is a firearm

R.S. 14:67.15 Theft of a firearm - 2 years with or without hard labor without benefit of parole, probation, or suspension of sentence for a first offense. For a second offense, imprisonment with or without hard labor for at least 5 years without benefit of parole, probation, or suspension of sentence. For a third offense, imprisonment at hard labor for at least 15 years without benefit of probation, parole, or suspension of sentence.

R.S. 14:69.1 Illegal possession of stolen firearms - 2 years with or without hard labor without benefit of probation, parole, or suspension of sentence for second or subsequent offense

R.S. 14:70.1 Medicaid fraud - 1 year with or without hard labor without benefit of probation, parole or suspension of sentence if the loss to the state is in excess of \$25,000.

R.S. 14:79 Violation of protective orders - 48 hours without benefit of probation, parole, or suspension of sentence on a **second conviction** for violation of protective orders which does not involve a battery to the person protective by the protective order. For a third or subsequent conviction which does not involve a battery, at least 14 days of imprisonment are imposed without benefit of probation, parole, or suspension of sentence. When the violation of protective orders involves a battery, and the offender has not been convicted of violating a protective order within the past five years, the offender shall be imprisoned at least 14 days without benefit of probation, parole, or suspension of sentence. When the violation of the protective order involves a battery and the offender has been convicted of violating a protective order within the past five years, the offender shall be imprisoned with or without hard labor for at least 1 year without benefit of probation, parole, or suspension of sentence.

R.S. 14:81.1 Pornography involving juveniles - 2 years at hard labor without benefit of parole, probation, or suspension of sentence

R.S. 14:81.2 Molestation of a juvenile - 1 year with or without hard labor and the defendant is not eligible to have his conviction set aside or his prosecution dismissed under C.Cr.P. Article 893. When the offender has control/supervision over the juvenile, he shall be imprisoned for not less than 1 year and the defendant is not eligible to have his conviction set aside or his prosecution dismissed under C.Cr.P. Article 893. If the incidents of molestation recur during a period of more than one year, then the offender shall be imprisoned for not less than 5 years with or without hard labor without benefit of parole, probation, or suspension of sentence. On a subsequent conviction, the offender shall be imprisoned for 20 years at hard labor without benefit of parole, probation, or suspension of sentence.

R.S. 14:87.1 Killing a child during delivery - Life imprisonment at hard labor

R.S. 14:89.1 Aggravated crime against nature - 3 years at hard labor without benefit of parole, probation, or suspension of sentence

R.S. 14:91.7 Unauthorized possession or consumption of alcoholic beverages on public school property - 15 days without benefit of suspension of sentence

R.S. 14:94 Illegal use of weapons or dangerous instrumentalities - 4 years at hard labor without benefit of probation or suspension of sentence **if** a firearm was discharged from a motor vehicle located on a public highway where the intent is to injure, harm, or frighten another person. When the offense involves discharging a firearm while committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another to commit a crime of violence or violation of the Uniform Controlled Dangerous Substances Law, then the offender shall be imprisoned at hard labor for not less than 10 years without benefit of parole, probation, or suspension of sentence. If the firearm was a machine gun or was equipped with a silencer or muffler, then the offender shall be imprisoned for not less than 20 years without benefit of parole, probation, or suspension of sentence.

If the violation, upon second or subsequent conviction, involves the use of a machine gun or a firearm equipped with a silencer or muffler, then the offender shall be sentenced to imprisonment for life without benefit of parole, probation, or suspension of sentence.

R.S. 14:95 Illegal carrying of weapons - 5 years at hard labor without benefit of probation, parole, or suspension of sentence if the offender uses, possesses, or has under his immediate control any firearm, or other dangerous weapon while committing or attempting to commit a crime of violence, or while in the possession of or during the sale/distribution of a controlled dangerous substance. Upon a second or subsequent conviction, the offender shall be sentenced to at least 20 years at hard labor without benefit of probation, parole, or suspension of sentence.

R.S. 14:95.1 Possession of firearm or carrying concealed weapon by a person convicted of certain felonies - 10 years at hard labor without benefit of probation, parole, or suspension of sentence.

R.S. 14:95.8 Illegal possession of a handgun by a juvenile - 6 months with or without hard labor, with at least 90 days to be served without benefit of probation, parole, or suspension of sentence if committed by a juvenile adjudicated delinquent, having been previously found guilty or adjudicated delinquent for any crime of violence or attempt or conspiracy to commit a crime of violence

R.S. 14:98 Operating a vehicle while intoxicated - On a first conviction if the offender's BAC level was 0.15% or more, then at least 48 hours of the minimum 10-day sentence shall be served without benefit of parole, probation, or suspension of sentence. On a second conviction, at least 48 hours of the 30 day sentence shall be served without benefit of parole, probation, or suspension of sentence. If on the second conviction, the offender's BAC level was 0.15% or more, then at least 96 hours of the minimum 30 days shall be served without benefit of parole, probation, or suspension of sentence. On a conviction of a second offense when the first offense was for the crime of vehicular homicide or first degree vehicular negligent injuring, then the offender shall be imprisoned with or without hard labor for not least than 1 year, with at least six months of the sentence served without benefit of probation, parole, or suspension of sentence. On a third conviction, the offender shall be imprisoned with or without hard labor for not less than 1 year, with at least six months served without benefit of probation, parole, or suspension of sentence. On a fourth or subsequent conviction, the offender shall be imprisoned at hard labor for not less than 10 years, with at least 2 years served without benefit of probation, parole, or suspension of sentence.

R.S. 14:106 Obscenity - On a second conviction - 6 months with or without hard labor without benefit of probation, parole, or suspension of sentence. On a third or subsequent conviction - 2 years with or without hard labor without benefit of probation, parole, or suspension of sentence. When committed with or in the presence of an unmarried person under the age of seventeen years, the offender shall be imprisoned with or without hard labor for not less than 2 years without benefit of parole, probation, or suspension of sentence.

R.S. 14:106.1 Promotion or wholesale promotion of obscene devices - 6 months with or without hard labor without benefit of probation, parole, or suspension of sentence.

R.S. 14:123 Perjury - If committed during a trial in which a sentence of death or life imprisonment may be imposed, the offender shall be imprisoned at hard labor for not less than 5 years without benefit of parole, probation, or suspension of sentence. When committed during a trial in which a sentence of imprisonment necessarily at hard labor for any period less than life is imposed, the offender shall be imprisoned at hard labor for not less than 1 year without benefit of parole, probation, or suspension of sentence.

R.S. 14:283 Video voyeurism - 6 months at hard labor without benefit of parole, probation, or suspension of sentence for a second of subsequent conviction. When the video voyeurism involves the viewing, photographing, or filming of a sexual nature, the minimum penalty is one year at hard labor without benefit of parole, probation, or suspension of sentence. When the video voyeurism involves a child under the age of seventeen, then the minimum penalty is 2 years at hard labor without benefit of paroles, probation, or suspension of sentence.

B. Habitual Offender Law

R.S. 15:529.1, otherwise known as the Habitual Offender Law, provides for sentences for second and subsequent offenders. It includes not only persons who have been convicted of a felony, but also persons adjudicated a delinquent for the commission of a felony-grade violation of either certain violations of the Controlled Dangerous Substances Law or a crime of violence as listed in R.S. 15:529.1(A)(2). In general, the Habitual Offender Law provides as follows:

For a **second** felony - If a first conviction of that felony prescribes imprisonment for any term less than life, then the offender must serve not less than 1/2 the longest term and not more than twice the longest term prescribed for a first conviction.

For a **third** felony - If a first conviction of that felony prescribes imprisonment for any term less than life, then the offender must serve not less than 2/3 of the longest possible sentence and not more than twice the longest possible sentence prescribed for a first violation. However, if the third felony or either of the prior two felonies fits into one of the following categories, then the offender shall be imprisoned for the remainder of his natural life without benefit of parole, probation, or suspension of sentence:

- crime of violence;
- a violation of the Controlled Dangerous Substances Law punishable by imprisonment for more than five years; or
- any other crime punishable by imprisonment for more than twelve years.

For a **fourth** felony - If a first conviction of that felony prescribes imprisonment for any term less than life, then the offender shall serve not less than the longest period prescribed for a first conviction of that felony but in no event less than twenty years and not more than life. However, if the fourth felony or either of the prior two felonies fits into one of the following categories, then the offender shall be imprisoned for the remainder of his natural life without benefit of parole, probation, or suspension of sentence:

- crime of violence;
- a violation of the Controlled Dangerous Substances Law punishable by imprisonment for more than five years; or
- any other crime punishable by imprisonment for more than twelve years.

C. Possession/Use of firearm during the commission of a felony

Article 893.3 of the Code of Criminal Procedure provides for the following sentences without benefit of parole, probation, or suspension of sentence:

If the offender **possessed** a firearm during the commission of a felony, then the court shall impose a term of imprisonment of two years; however, if the maximum sentence for the underlying offense is less than two years, the court shall impose the maximum sentence.

If the offender **used** the firearm - the court shall impose a five year sentence; however, if the maximum sentence for the underlying offense is less than five years, then the court shall impose the maximum sentence.

If the offender **discharged** the firearm - the court shall impose a ten year sentence; however, if the maximum sentence for the underlying offense is less than ten years, then the court shall impose the maximum sentence.

If the offender **discharged the firearm and caused bodily injury** - the court shall impose a fifteen year sentence; however, if the maximum sentence for the underlying offense is less than fifteen years, then the court shall impose the maximum sentence.

D. Title 40 Uniform Controlled Dangerous Substances Law

The following sections of law contain mandatory minimum sentences depending upon the type/schedule of the drug involved and other circumstances:

R.S. 40:966 Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule 1; possession of marijuana

R.S. 40:967 Prohibited acts; Schedule II, penalties

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R.S. 40:981.2 Soliciting minors to distribute controlled dangerous substances

R.S. 40:981.3 Violation of Uniform Controlled Dangerous Substances Law (while on school property)

E. Weapons

R.S. 40:1792 Possession of unidentifiable firearm; particular penalties; identification of source of firearm - 5 years at hard labor without benefit of probation, parole, or suspension of sentence.